

1 ROSS LIBENSON (SBN 181912)
2 **LIBENSON LAW**
3 300 Lakeside Drive, Suite 1000
4 Oakland, CA 94612
5 Telephone: (510) 451-4441
6 Facsimile: (510) 877-3222
7 E-Mail: Ross@LibensonLaw.com

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9 Attorneys for Plaintiff
10 Aaron Lacs

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 AARON LACS

16 Plaintiff,

17 v.

18 UNITED STATES OF AMERICA, a
19 governmental entity, AMISHA
20 SURA, and CLINICA DE SALUD
21 DEL VALLE DE SALINAS

22 Defendants.
23

Case No.

COMPLAINT and JURY DEMAND

24 Plaintiff AARON LACS ("LACS" or "Plaintiff,") for his complaint against
25 Defendants, alleges as follows:

26 **JURISDICTION**

27 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1346(b). Additionally,
28 this Court has jurisdiction over all other claims pursuant to 28 U.S.C. §1367 because

1 all of the claims arise from a common nucleus of operative facts that are so
2 intertwined that they cannot be reasonably separated.
3

4 **INTRADISTRICT ASSIGNMENT**

5 2. This matter is a dental malpractice action and an action for concealment. A
6 substantial part of the events giving rise to the cause of the action occurred in
7 Monterey County, which makes San Jose the proper assignment pursuant to Civil
8 L.R. 3-2(d).
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10

11 **VENUE**

12 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2)
13 and 1391(e)(1) because a substantial part of the events giving rise to the claim
14 occurred in this judicial district, and 28 U.S.C. §1402(a) as Plaintiff LACS resides in
15 this judicial district.
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18 **PARTIES**

19 4. Plaintiff LACS, is a resident of Monterey County, State of California,
20 whose date of birth is [REDACTED]
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23 5. Defendant UNITED STATES OF AMERICA ("USA") is the federal
24 government, and is a proper defendant pursuant to 28 U.S.C. §2679(b)(1) for claims
25 for money damages arising from or out of a negligent or wrongful act and/or
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1 omission of any federal employee committed within the course and scope of their
2 employment.
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4 6. Defendant CLINICA DE SALUD DEL VALLE DE SALINAS (“CSVs”) holds itself out as, and on that basis it is alleged, a “Joint Commission on
5 Accreditation of Healthcare Organization, and its sites are deemed Federal Tort
6 Claims Act (“FTCA”) deemed facilities.” Defendant CSVs also holds itself out, and
7 on that basis it is alleged, “is a health center program grantee under 42 U.S.C.
8 254(b), and deemed Public Health Service employee under 42 U.S.C. 233(g)-(n),”
9 and subject to the FTCA, including but not limited to 28 U.S.C. 2680(h).
10

11 7. Defendant AMISHA SURA (“SURA”) is, and at all times mentioned
12 herein, a dentist licensed to practice dentistry by the State of California, holding
13 license #103384, and was an employee of the Defendant CSVs, and Plaintiff is
14 informed and believes, and thereon alleges Defendant SURA is deemed a Public
15 Health Service employee under 42 U.S.C. 233(g)-(n) and subject to the FTCA,
16 including but not limited to 28 U.S.C. 2680(h).
17

18 8. Plaintiff is informed and believes, and based thereon alleges, that in
19 performing the acts that give rise to this Complaint each of the Defendants named
20 herein was the agent, employee, joint-venturer, employer, partner, manager or
21 controlling entity of the other Defendant, and in doing the things hereinafter alleged,
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1 was acting within the course and scope of such relationship. Plaintiff further alleges
2 that each of the Defendants named herein authorized, consented to and ratified all of
3 the alleged conduct, acts and omissions by the remaining Defendant with both actual
4 and constructive knowledge of said conduct.
5

6 **ADMINISTRATIVE EXHAUSTION**

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8 9. On or about June 12, 2019, Plaintiff LACS served and presented Defendant
9 USA, through the appropriate federal agency, the cabinet department U.S.
10 Department of Health and Human Services (“DHHS”), with an administrative claim
11 pursuant to the FTCA with supporting documents.
12

13
14 10. By letter dated July 15, 2019, (the “Acknowledgment Letter”) the DHHS,
15 through its Office of the General Counsel, Claims Office, acknowledged receipt of
16 Plaintiff’s administrative tort claim on June 17, 2019, “for consideration and reply.”
17

18 11. The DHHS’ Acknowledgment Letter assigned Claim No. 2019-0560 to
19 the Administrative Tort Claim of Aaron Lacs.
20

21 12. Pursuant to the request and instructions of the DHHS in its July 15, 2019,
22 Acknowledgment Letter, received by U.S. Mail by Plaintiff’s counsel on July 19,
23 2019, additional “substantiating evidence” in the forms requested by the DHHS was
24 sent by Federal Express to the DHHS on July 31, 2019, and received by the DHHS
25 on August 1, 2019.
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1 13. Since that time, or more than six (6) months, the DHHS has failed to make
2 a final disposition of the Administrative Tort Claim of Aaron Lacs, or provide any
3 further response or communication whatsoever, and pursuant to 28 U.S.C. § 2675(a),
4 is now “deemed a final denial of the claim for purposes of,” the FTCA’s exhaustion
5 requirement.
6

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8 **COMPLIANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE §364**
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10 14. On May 23, 2019, Defendant SURA was served by mail sent to her
11 personal counsel, Elizabeth Leitzinger, Esq., of the Fenton & Keller law firm in
12 Monterey, California, Plaintiff Lacs’ Notice of Intent to Commence Action Against
13 Health Care Provider For Professional Negligence pursuant to California Code of
14 Civil Procedure §364.
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16
17 15. On May 23, 2019, Defendant CSVS was served by mail sent to its
18 personal counsel, Elizabeth Leitzinger, Esq., of the Fenton & Keller law firm in
19 Monterey, California, Plaintiff Lacs’ Notice of Intent to Commence Action Against
20 Health Care Provider For Professional Negligence pursuant to California Code of
21 Civil Procedure §364.
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24 16. Attorney Leitzinger in writing acknowledged receipt of the respective
25 notices pursuant to California Code of Civil Procedure §364 on or about June 6,
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1 2019, and identified the DHHS as the appropriate federal agency for presentation of
2 the Administrative Tort Claim of Aaron Lacs.
3

4 **BACKGROUND FACTS**

5 17. Plaintiff incorporates by reference Paragraphs 1 through 17 of the
6 Complaint as if set forth in full herein.
7

8 18. On or about April 4, 2019, Plaintiff LACS presented himself to
9 Defendants SURA, CSVS and Does 1-10 for the extraction of his lower left third
10 molar, commonly referred to as a wisdom tooth (tooth #17.)
11

12 19. As a result a physician-patient relationship, which is a fiduciary
13 relationship, was established between Plaintiff LACS and Defendants SURA, CSVS
14 and Does 1-10.
15

16 20. During the extraction Plaintiff LACS was under the care and control of
17 Defendant SURA.
18

19 21. During the extraction Defendant SURA used a dental drill with a dental
20 bur both solely within her control and permitted and caused the 2.5 cm to 3.0 cm
21 dental bur to be lost and ingested by Plaintiff LACS contrary to what any reasonable
22 and careful dentist would do.
23

24 22. Plaintiff LACS made no voluntary actions to cause or contribute to the
25 ingestion of the dental bur.
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1 23. At or about that time, Plaintiff LACS started to choke, and Defendant
2 SURA told Plaintiff LACS to cough on to the paper bib which had been placed on
3 his chest prior to the operation, immediately after which Defendant SURA examined
4 the bib but did not locate the dental bur.
5

6 24. Defendant SURA in an effort to conceal her negligence failed to inform
7 Plaintiff LACS at that time she had lost the dental bur from the dental drill which she
8 had been using inside his oral cavity and near his esophagus.
9
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11 25. Defendant SURA contrary to what any reasonable and careful dentist
12 would do neither informed Plaintiff LACS that she had lost the dental bur nor
13 expressed any urgency to him that a metal dental bur was now inside his digestive
14 tract.
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17 26. Defendant SURA then left the operating room, upon information and
18 belief and thereon alleged, to conduct a procedure on another patient leaving
19 Plaintiff LACS to sit in the dental chair for approximately thirty (30) to forty (40)
20 minutes.
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23 27. When Defendant SURA returned to Plaintiff LACS still sitting in the
24 dental chair in the operating room, and in an effort to continue to conceal her
25 negligence from Plaintiff LACS, Defendant SURA again failed to inform Plaintiff
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1 LACS that she had permitted and caused him to ingest the dental bur from the dental
2 drill which was solely within her control.
3

4 28. Rather, at the time, Defendant SURA continued with her attempt to
5 complete the extraction of the wisdom tooth (tooth #17)¹.
6

7 29. After concluding she had completed the extraction of the wisdom tooth
8 (tooth #17), Defendant SURA, in another attempt to conceal her negligence, told
9 Plaintiff LACS words or words to the effect that he had ingested a piece of tooth and
10 it would more likely than not “pass through” him.
11

12 30. It was at that time, without communicating any urgency to Plaintiff
13 LACS, that Defendant SURA suggested he go to the hospital to get an x-ray with
14 words or words to the effect of “just to make sure it is ok.”
15
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17 31. As a result of Defendant SURA concealing her negligence, Plaintiff
18 LACS drove himself to the hospital after leaving Defendant CSVS’s dental clinic.
19

20 32. Arriving at the hospital, Plaintiff LACS still was under the impression he
21 had only swallowed a piece of the extracted tooth #17, and was referred to the
22 radiology department.
23

24 ¹In or around Thanksgiving 2019, Plaintiff LACS felt a protrusion at the site of
25 the attempted extraction. On or about December 9, 2019, he went to a dentist and it
26 was determined that Defendant SURA had failed to extract a root of tooth #17
27 contrary what any reasonable and careful dentist would do. This more recently
28 discovered injury caused by Defendants SURA’s and CSVS’s treatment and care on
April 4, 2019, is the subject of a separate FTCA Notice of Claim on a Standard Form
95 which as of the date of the filing of this Complaint has neither been
acknowledged nor denied by the DHHS.

34. As a result of Defendants SURA and CSVS not being truthful to Plaintiff LACS, the dental bur was permitted, more likely than not, to travel further through his digestive tract than it would have had he been immediately and honestly informed that the dental bur had been lost and swallowed.

35. As a direct and proximate result of the negligence and subsequent concealment by Defendants SURA and CSVS, the dental bur ultimately migrated to Plaintiff LACS' 4th portion of his small intestine with risk of small bowel laceration or perforation, and therefore, after an initial attempt at endoscopic removal was unsuccessful in reaching the dental bur in the emergency department, Plaintiff LACS underwent monitored anesthesia in the operating room and the drill bit was removed with a rat tooth forcep placed by an extended endoscope.

(Dental Malpractice Against Defendants USA, SURA, and CSVS)

Complaint and Jury Demand

1 37. Pursuant to Plaintiff LACS' employment of Defendants USA, SURA and
2 CSVS to diagnose, treat and care for his dental condition and do all things necessary
3 for the care and treatment of him, Defendants rendered professional dental services
4 in the treatment and care of Plaintiff LACS, and thereby, owed him a duty to act
5 reasonably and carefully in treating him.
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8 38. Defendants USA, SURA and CSVS negligently failed to act reasonably
9 and carefully in treating him, including but not limited to permitting a dental bur to
10 be dropped into his digestive tract, failing to keep track of all dental instruments
11 placed inside the oral cavity, failing to remove the entirety of the root of tooth #17
12 and failing to timely inform him that he had swallowed a dental bur which was in the
13 sole control of the Defendants.
14
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16 39. As a direct and proximate result of the negligence of the Defendants,
17 Plaintiff LACS has sustained injuries, damages and losses, to the extent presently
18 known, as follows: past and future medical, dental and related expenses; past and
19 future pain, suffering, anxiety and emotional distress; and impairment of enjoyment
20 of life.
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24 WHEREFORE, Plaintiff LACS prays for judgment against the Defendants as
25 set forth below.
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SECOND CAUSE OF ACTION

(Concealment Against Defendants SURA and CSVS)

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 -39 of this Complaint as if set forth in full herein.

41. On April 4, 2019, Defendants SURA and CSVS falsely represented to Plaintiff LACS the important fact that he has swallowed a piece of tooth #17, and not that Plaintiff LACS had swallowed the dental bur that Defendants had lost while operating inside his oral cavity.

42. In fact, Defendants SURA and CSVS knew that they had lost their dental instrument and Plaintiff LACS had swallowed it.

43. Defendants SURA and CSVS intentionally failed to disclose an important fact or facts known to them and which Plaintiff LACS could not have discovered.

44. Defendants SURA and CSVS also disclosed some facts to Plaintiff LACS but intentionally failed to disclose other important facts, including but not limited to, the urgency to have the dental bur removed from his digestive tract to not only stop its migration through his stomach but also to make retrieval less difficult making the disclosure that it was piece of tooth deceptive.

46. Plaintiff LACS did not know of the concealed facts.

47. Defendants SURA and CSVS intended to deceive Plaintiff LACS by intentionally concealing fact or facts.

48. Plaintiff LACS reasonably relied on Defendants SURA's and CSVS's deception or deceptions.

49. As a direct and proximate cause of Defendants SURA's and CSVS's conduct Plaintiff LACS has sustained damages in an amount to be proved at trial.

WHEREFORE, Plaintiff LACS prays for judgment against the Defendants as set forth below.

WHEREFORE, Plaintiff LACS prays for judgment against the Defendants as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief against the Defendants, and each of them, as follows:

1. For economic damages, including but not limited to, past and future medical, dental and related expenses and any other special damages in an amount according to proof at trial, but no less than \$250,000;

2. For past and future non-economic damages, including but not limited to, emotional distress, pain and suffering, anxiety, impairment of enjoyment of life and

1 all other general damages as allowed by law in an amount according to proof at trial,
2 but no less than \$250,000;

3
4 3. For costs as permitted by law; and

5 4. Such further relief which the court deems just and reasonable.

6 DATED: March 23, 2020

LIBENSON LAW

8
9 By: 

11 ROSS L. LIBENSON

12 Attorneys for Plaintiff AARON LACS

13
14 **DEMAND FOR JURY TRIAL**

15 Pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 3-6(a),
16
17 Plaintiff LACS hereby demands a trial by jury on the cause(s) of action for which a
18 jury is permitted.

19 DATED: March 23, 2020

LIBENSON LAW

21
22 By: 

24 ROSS L. LIBENSON

25 Attorneys for Plaintiff AARON LACS